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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FREDERICK T. SCALZO, Individually
and as Trustee, etc., et al.,

Plaintiffs and Appellants,

v.

NEWMAYER & DILLION, LLP,

Defendant and Respondent.

G051959

(Super. Ct. No. 30-2013-00693661)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, John C. Gastelum, Judge. Appeal dismissed. Request for judicial notice denied.

Gemmill, Baldrige & Yguico and Carlos V. Yguico for Plaintiffs and Appellants.

Baker & Baker, William E. Baker, Jr., and Robert N. Tan for Defendant and Respondent.

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This is the second appeal in a fee dispute between plaintiffs Frederic T. Scalzo, individually (Scalzo) and as trustee for the Martin E. and Marion E. Scalzo Family Trust 1987 (Trust), and Scalzo's sister, Donna M. Ostermiller (Ostermiller); and their former attorneys, defendant Newmeyer & Dillion, LLP.

In our prior opinion, we affirmed the trial court's denial of plaintiffs' motion to disqualify defense counsel. (*Scalzo v. Newmeyer & Dillion, LLP* (Feb. 26, 2016, G050835) [nonpub. opn.].) Plaintiffs now appeal from the trial court's order sustaining, without leave to amend, their demurrer to defendant's petition to confirm an arbitration award and denying that petition.

Plaintiffs have not shown they are aggrieved parties with standing to appeal. As noted, the court sustained their demurrer and denied defendant's petition to confirm their arbitration award. Accordingly, we dismiss the appeal and deny plaintiffs' request for judicial notice which has no bearing on our disposition of this appeal.

FACTS AND PROCEDURAL HISTORY

In 2004, defendant and Trust entered into a written retainer agreement (2004 agreement). Although the 2004 agreement concerned defendant's representation of Trust in a dispute with the City of San Juan Capistrano (the *City* matter), the parties agreed it "shall also apply to any additional matters [defendant] agree[d] to undertake on the Trust's behalf unless both . . . agree in writing." The 2004 agreement contained a provision for binding arbitration with Judicial Arbitration and Medication Services, Inc./Endispute (JAMS) for "any controversy, dispute, or claim arising out of or relating to" the 2004 agreement.

In 2009, Defendant and Trust modified the 2004 agreement. The 2009 modification (2009 modification) changed the manner of billing for the *City* matter to a contingency basis and excluded from binding arbitration with JAMS "disputes as to attorneys' fees and/or costs charged under this agreement, which shall be handled pursuant to California Business and Professions Code section 6200 et seq."

From 2004 to 2012, defendant represented Trust, Scalzo and Ostermiller in the *City* matter and several other cases. In 2012, a dispute arose concerning outstanding attorney fees owed by plaintiffs to defendant.

Defendant submitted a demand for binding arbitration with JAMS. After JAMS notified all parties the arbitration had commenced, Trust and Scalzo in his individual capacity requested JAMS to stay the binding arbitration while they pursued nonbinding arbitration under California's Mandatory Fee Arbitration Act (MFAA) with the Orange County Bar Association (OCBA).

In November 2013, the OCBA awarded defendant nearly \$440,000 (OCBA award) for attorney fees and costs against Trust and Scalzo; the OCBA award excluded Ostermiller because she did not appear at the OCBA arbitration.

On December 17, Trust and Scalzo requested a trial de novo with JAMS. The next day, plaintiffs filed a complaint for declaratory relief to enjoin the JAMS arbitration. The first cause of action alleged the *City* matter was not subject to JAMS arbitration based on the 2009 modification. The second and third causes of action asserted Scalzo and Ostermiller had no obligation to arbitrate any fee claims as to certain matters because they were not parties to any arbitration agreement with defendant.

Defendant demurred to the complaint on the ground it named only Trust as an independent plaintiff, rather than filing it through the trustees. Defendant also filed a petition to compel JAMS arbitration against all three plaintiffs, in lieu of filing an answer.

In their opposition to the demurrer, plaintiffs requested leave to amend the complaint to name Scalzo, in his capacity as trustee, to replace Trust as the designated party plaintiff. The court sustained the demurrer and granted leave to amend.

On September 18, 2014, nine months after the original complaint was filed, plaintiffs filed a first amended complaint naming Scalzo in his capacity as trustee for Trust, and Scalzo and Ostermiller in their individual capacities. Plaintiffs also requested, for the first time, a trial de novo of the OCBA award as follows: "Plaintiffs' request to

conduct trial de novo concerning the foregoing [fee or cost] claims will be litigated in this Superior Court proceeding rather than the pending JAMS arbitration proceeding, and that the parties' previously arbitrated controversy shall proceed in accordance with [statutes] concerning civil actions generally."

Plaintiffs also opposed defendant's petition to compel arbitration with JAMS. According to plaintiffs, the term "action" in Business and Professions Code section 6204, subdivisions (b) and (c)¹ includes a pending JAMS proceeding. They argued that by filing requests for trial de novo with JAMS and by their complaint for declaratory relief, which referenced those trial de novo requests, they had complied with those subdivisions and were entitled to a new trial in the superior court.

Without addressing these arguments, the trial court granted defendant's petition to compel arbitration with JAMS as to Trust but denied it as to Scalzo and Ostermiller individually because defendant had not shown they had signed any contract containing an arbitration provision. Thereafter, defendant answered the amended complaint.

Defendant also petitioned to confirm the OCBA award as to Scalzo in his individual capacity. Plaintiffs demurred to the petition, arguing the award was not a final binding award and repeating the argument that filing of de novo requests with JAMS allowed them to relitigate the fee dispute.

¹ All further undesignated statutory references are to this code. The word "subdivision," its shortened form of "subd." and the symbol § shall be omitted. Section 6204 provides, in relevant part: "(a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c) [¶] (b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after service of notice of the award. . . . [¶] (c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award. . . ."

The court sustained plaintiffs' demurrer to defendant's petition to confirm the OCBA award without leave to amend, but without prejudice to defendant filing another petition after the JAMS arbitration. It also denied without prejudice defendant's petition to confirm the OCBA award until after the JAMS arbitration concluded.

In its tentative ruling posted on the Internet before the hearing on the matter, the court addressed plaintiffs' claims they were entitled to trial *de novo*. As to section 6204(c), the court found: (1) the complaint filed "on December 18, 2013, failed to request a trial *de novo*, in compliance with . . . section 6204(c); rather, . . . the [c]omplaint sought only declaratory relief as to whether [p]laintiffs were obligated to further arbitrate with [d]efendant"; (2) the amended complaint was filed over 30 days after the OCBA award was issued and the relation back doctrine could not be used "to correct a legally inadequate request for trial *de novo* under . . . section 6204(c)"; (3) no authority supported the claim that substantial compliance sufficed to satisfy section 6204; and (4) plaintiffs' original "[c]omplaint did *not* clearly communicate an intent to challenge the arbitration award *within this action*" unlike the case cited by plaintiffs, *Harf v. Synnyview Dev., Inc.* (1982) 128 Cal.App.3d 909. Nevertheless, the court determined the facts sufficed to comply with section 6204(b). It found Trust was "entitled to submit to JAMS arbitration and obtain a trial *de novo*, concerning the fees previously arbitrated pursuant to the MFAA." For that reason, the court could not confirm the OCBA award at that time and sustained the demurrer but "*without prejudice* to [d]efendant filing an additional [p]etition to [c]onfirm." Given that ruling, the court denied and dismissed the petition to compel arbitration.

DISCUSSION

Plaintiffs appeal from the order sustaining their demurrer to defendant's petition to confirm the OCBA award and denying/dismissing that petition. But they have not demonstrated they have standing to do so.

Assuming without deciding an appealable judgment or order exists at all, it is well settled “[o]nly an aggrieved party may appeal” and “‘as a general rule, a party is not aggrieved and may not appeal from a judgment or order entered in its favor.’” (*American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1472.) Although “‘a party which has not obtained *all* of the relief it requested in the trial court is aggrieved and may appeal” (*ibid.*), that did not happen here. Rather, plaintiffs obtained all of the relief they requested in their demurrer and opposition to defendant’s petition to confirm the OCBA award—the court sustained plaintiffs’ demurrer without leave to amend and both denied and dismissed defendant’s petition to confirm.

Plaintiffs contend they are aggrieved by the order denying defendant’s petition to confirm the OCBA arbitration award because the court “ruled that [Scalzo] and the Trust had no legal right to a trial de novo in a judicial forum. The trial court’s denial of access to a judicial forum, in the guise of an order denying a petition to confirm [an] arbitration award, left [Scalzo] as an aggrieved party relative to the order denying confirmation.”

But on appeal, “we disregard the trial court’s tentative ruling . . . and consider only the trial court’s final order.” (*Silverado Modjeska Recreation & Parks Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 300-301.) Moreover, in reviewing an order sustaining a demurrer without leave to amend, we review the trial court’s “‘ruling, not its rationale.’” (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 433.) Because the court’s final order was entered in plaintiffs’ favor, they have no standing to appeal it regardless of the court’s rationale.

Plaintiffs request, in the alternative, that we treat the appeal as a petition for writ of mandate, claiming “[a]ppellate courts have recognized that forcing a party to arbitrate a controversy which does not belong in arbitration will cause irreparable injury to the party resisting arbitration and will leave said party with no adequate remedy at law.” But Scalzo is not being forced to arbitrate. He and the other plaintiffs requested

and received nonbinding arbitration under the MFAA which resulted in the OCBA award. He and Trust then requested trial de novo with JAMS. When defendant petitioned to compel arbitration with JAMS, the court granted it as to Trust *but not Scalzo*.

DISPOSITION

The appeal is dismissed. Defendant shall recover its costs on appeal.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.